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25-ORD-322

October 16, 2025

In re: Olivia Tipton/Oldham County School District

Summary: The Oldham County School District ("the District") did not violate the Open Records Act ("the Act") when it determined a portion of a request posed an unreasonable burden under KRS 61.872(6). The District complied with KRS 61.872(5) when it asserted a need for additional time. The Office cannot resolve a factual dispute as to whether a requester agreed to a modification of search terms. The District did not withhold or redact records without explanation, nor did it subvert the intent of the Act within the meaning of KRS 61.880(4).

Open Records Decision

On March 4, 2025, Olivia Tipton ("the Appellant") submitted a request to the District for "[a]ll emails, reports, meeting minutes, or other communications" to or from 13 named individuals between August 1, 2024, and March 4, 2025, "that reference or include correspondence regarding any of the following terms: Tipton, Olivia Tipton, Ms. Tipton, Mrs. Tipton, Mr. Tipton, Tim Tipton, [full name of Appellant's child], 'H', [first name of Appellant's child], H Tipton, [student ID number], or any communication related to Buckner Elementary 4th Grade schedule." In a timely response, the District denied the portion of the request using "H" as a search term as an "unreasonable burden" under KRS 61.872(6), explaining that a search for "H" included "any and all correspondence with the letter H" and "produced over 9,000 potentially responsive documents, which would require review to see if the document was (1) responsive to [the] request and (2) required a redaction or exemption." As to the remainder of the Appellant's request, the District stated "the initial search yielded over 4,200 emails," many of which could be duplicates, and it would need until April 8, 2025, to process the request due to the large number of records. The District indicated this time could be reduced if the Appellant narrowed the scope of her request.

On March 13, 2025, the Appellant proposed eliminating some duplicate emails by modifying the search terms to "Tipton, Olivia, Tim, 'H' [with a space inserted on

each side of the letter], [child's first name], [student ID number], or any communication related to Buckner Elementary 4th Grade schedule." On March 14, 2025, the District replied that those modified search terms actually "produced 4,000 additional responsive documents" and further stated it was impossible to search for "H" with added spaces "because the system automatically removes those spaces." The District proposed modifying the search terms to "H.T.," [child's first name], [student ID number], "4th Grade Schedule," "Tipton," "Olivia Tipton," and "Tim Tipton," which would return only "a little over 2,800 potentially responsive emails."

On March 17, 2025, the Appellant inquired whether a search for "Olivia Tipton" would include results containing "Olivia," and whether the District needed "to manually look at every record eliminate duplicate emails" or duplicates could be eliminated automatically. The District responded on March 18, 2025, that only the exact search term "Olivia Tipton" would be found by a search for that term, and that it was necessary "to manually review every page for duplicates and potential redactions/exemptions."

Having heard nothing further from the Appellant by March 25, 2025, the District informed her it had "exported the documents based on the proposed search" terms it had suggested on March 14, 2025. The District stated it "did not include any redactions or exemptions, but did remove the duplicates or documents that were not responsive to the request." Additionally, the District stated there were "over 1,200 pages," which was too large an amount to send by email, and requested the Appellant "bring a flash drive to the central office," onto which the District would export the files. The Appellant replied that she would do so the following day at 9:15 a.m., "[w]ithout waiving [her] argument that the documents being provided may not be responsive to [her] original request." In response, the District stated the Appellant could drop off the drive at 9:15 a.m. and the files would be transferred to it by a certain employee "when she gets back to the office," after which the Appellant would be notified when the drive was ready to be picked up. The Appellant replied that she considered it unacceptable for the District not to have another employee available to transfer the files immediately when she arrived, because 9:15 a.m. was "during the regular office hours of the public agency." In response, the District stated this was an "unreasonable" expectation.

On August 28, 2025, after evidently obtaining the records as scheduled, the Appellant asked the District "to provide the documents that were originally requested" instead of using the modified search terms. On September 19, 2025, having received no response to this latest communication, the Appellant initiated this appeal.

The Appellant makes several arguments on appeal. First, she claims the District improperly relied on KRS 61.872(6) when it denied her request for communications containing the term "H." Under KRS 61.872(6), "[i]f the application places an unreasonable burden in producing public records[,] the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence." "When determining whether a particular request places an unreasonable burden on an agency, the Office considers the number of records implicated, whether the records are in a physical or electronic format, and whether the records contain exempt material requiring redaction." 22-ORD-221. Of these, the number of records implicated "is the most important factor to be considered." 22-ORD-182.

On appeal, the District states the search for "H" resulted in 9,811 emails exclusive of attachments and 11,482 emails if attachments were included, for a total of 52,162 pages of records. The District notes that these would have to be reviewed both for responsiveness and for "exemptions under personal privacy and FERPA [the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g], and potentially attorney-client privilege or preliminary drafts, notes, correspondence, or recommendations or memoranda due to the positions of the individuals within the District."[1] In 25-ORD-042, a university showed an unreasonable burden by clear and convincing evidence when its search resulted in 53,343 pages of records, which would have required 294 hours to review and redact at the rate of 20 seconds per page or 889 hours at the rate of one minute per page. Similarly, in 23-ORD-251, an agency sustained its denial under KRS 61.872(6) where the request implicated over 6,500 emails requiring review for responsiveness and potential redactions under FERPA and the attorney-client privilege. Here, the burden on the District is comparable to those determined to be unreasonable in 25-ORD-042 and 23-ORD-251.

The Appellant objects that the District could simply "ask those named employees to search for records pertaining to [her] child during those dates" to locate the records she sought. However, that was not how the Appellant framed her request. "Ultimately, it is the requester who controls . . . the scope and complexity [of] requests." 25-ORD-235 n.4. Here, the Appellant chose to submit her request in terms of a search for keywords. It is not always necessary to frame a request by specific search terms. *See, e.g.,* 25-ORD-169 n.1. If the Appellant wishes the District to search for records by another method, she is free to submit a different request. *See* 96-ORD-193 (noting there is "no limitation on the number of requests [a person] can submit"). Under the facts presented, the District did not violate the Act when it denied the Appellant's request for communications with the term "H."

[1] As the District explains, the individuals whose communications the Appellant requested include the "Superintendent, Assistant Superintendent for Support Services, Assistant Superintendent, Director of Student Services, Elementary Level Director, Assistant Director of Exceptional Children Services/District 504 Coordinator, and the Buckner Elementary Principal."

Next, the Appellant claims the District violated the Act when it initially stated it would require an additional 20 business days to make the remaining records available based on the Appellant's original search terms. Under KRS 61.880(1), a public agency must grant or deny a request for records within five business days. However, an agency may delay access to records beyond that time if such records are "in active use, storage, or not otherwise available." KRS 61.872(5). A public agency that invokes KRS 61.872(5) must give "a detailed explanation of the cause [for] further delay" and notify the requester of the "earliest date on which the public record[s] will be available for inspection." *Id.* Here, the District advised the Appellant that at least 4,200 emails were implicated, many of which might be duplicates, and that records must be reviewed for responsiveness and possible redactions. Thus, the District gave a sufficiently detailed explanation of the cause for delay.[2] Accordingly, the District did not violate the Act in its initial response to the request.

The Appellant additionally claims the District violated the Act by substituting a different set of search terms without her "consent." Here, the parties' course of conduct is relevant. After receiving the District's initial response based on her original search terms, the Appellant proposed an alternate set of terms in an attempt to narrow the search. The District replied with a counterproposal for a third set of search terms. After some discussion of how that search would function, the Appellant made no further response for a week, after which time the District notified the Appellant it had proceeded to search for records using its own search parameters. The Appellant agreed to collect the records on a flash drive, but ambiguously stated she was doing so "without waiving [her] argument" that she was entitled to all records responsive to her original search terms. After the Appellant received the records, more than five months apparently passed before she asserted her objection to the search terms and indicated she would appeal if the District did not fully comply with her original request. Under the totality of the circumstances, the District reasonably could have believed the Appellant had acquiesced in its revised set of search terms. Thus, the Appellant's argument ultimately presents a factual dispute the Office cannot resolve. *See, e.g.,* 25-ORD-017.

Next, the Appellant claims the District improperly withheld records that were allegedly exempt or redacted, without explanation. Under KRS 61.880(1), "a[n] agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a

[2] A person requesting a large volume of records may "expect reasonable delays in records production." 12-ORD-228. On appeal, the District further explains that the combined number of actual pages generated by all of the Appellant's original search terms other than "H" is 12,085. Assuming an average rate of one minute per page, review and redaction of 12,085 pages would take approximately 201 hours, or 25 business days. In light of these figures, the District's initial estimate of 20 additional business days was not unreasonable.

brief explanation of how the exception applies to the record withheld." Here, however, the Appellant apparently misunderstood the District's statement on March 25, 2025, that it "did not include any redactions or exemptions." As the District explains on appeal, this statement merely meant the District did not make any redactions, nor did it withhold any records other than duplicates. Therefore, the District did not violate the Act by redacting or withholding records without explanation.

Finally, the Appellant claims the District "subvert[ed] the intent of the [A]ct" by requiring "a USB drive to be dropped off and picked up at a later time." The Act allows a person to petition to petition the Attorney General to review an agency's action if the "person feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees, delay past the five (5) day period described in [KRS 61.880(1)], excessive extensions of time, or the misdirection of the applicant." KRS 61.880(4). Here, the District explains the employee who transferred the records to the Appellant's USB drive was not in the office at 9:15 a.m. when the Appellant arrived. Essentially, the Appellant complains that she was "instructed [to] leave" instead of waiting for the records, whereas KRS 61.872(3)(a) allows a requester to "inspect the public records [d]uring the regular office hours of the public agency." She claims this action subverted the intent of the Act because the District's "office is over a 20-minute drive from [her] house." However, the Appellant was not attempting to inspect records. Rather, she intended to collect copies that were not immediately available. Furthermore, even if the District directed her to leave its office until the records were available later the same day, this did not significantly delay or impede her access to the records.[3] Accordingly, the District did not subvert the intent of the Act within the meaning of KRS 61.880(4).

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to KRS 61.880(3), the Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings. The Attorney General will accept notice of the complaint emailed to OAGAppeals@ky.gov.

[3] The alleged "20-minute drive" between the Appellant's house and the District's office is not relevant, as the Appellant does not allege that the District specifically required her to go home.

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